

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-31

Date issued: November 1, 1994

Requested by: Representative Alice Olson

- QUESTION PRESENTED -

Whether a couple who are neither temporary nor permanent residents of North Dakota, nor have parents who are residents in North Dakota, may obtain a North Dakota marriage license if the marriage is to be solemnized in North Dakota.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a marriage license may be issued to a couple, neither of whom are residents of North Dakota nor have parents who are residents of North Dakota, if the marriage is to be solemnized within North Dakota.

- ANALYSIS -

Before amendment by the Legislature in 1991, N.D.C.C. ? 14-03-10 provided that a marriage license may be issued to "residents of another state by the county judge of the county wherein the marriage is to be solemnized according to the terms of section 14-03-19." N.D.C.C. ? 14-03-19 provided that "in the case where both of the contracting parties are residents of another state, if such parties present a valid marriage license regularly issued not more than sixty days prior thereto by the duly authorized officials of their state" then a North Dakota county judge may issue a marriage license if all other grounds of North Dakota law have been satisfied.

Therefore, nonresidents who desired to be married within North Dakota had to obtain a marriage license from their home state as well as North Dakota. Hearing on H. 1073 Before the House Comm. on Human Services and Veterans Affairs, 52d N.D. Leg. (January 14, 1991) (Statement of Representative Schimke).

House Bill No. 1073, as introduced in the 1991 session, removed any residency requirements for a couple to obtain a North Dakota marriage license. However, some of these requirements were replaced during committee meetings. Hearing

on H. 1073 Before the Conference Comm. on Human Services and Veterans Affairs, 52d N.D. Leg. (March 27, 1991) (Statement of Senator Lindgren). The bill as enacted states:

No person shall solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days prior to the date of the marriage by a county judge of the county in which either of the contracting parties or the parents of either of the parties resides or is temporary domiciled, or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or by a county judge of the county wherein the marriage is to be solemnized according to the terms of section 14-03-19. For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota shall be deemed to reside in the county wherein that person is stationed.

N.D.C.C. ? 14-03-10.¹ N.D.C.C. ? 14-03-19 presently provides:

If a county judge is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, then the county judge shall issue and sign a marriage license in duplicate and affix the judge's seal to both the original and the duplicate.

N.D.C.C. ? 14-03-19.²

When construing a statute, the entire enactment is considered together with the objects sought to be obtained and the statute's connection to other related statutes and the consequences of a particular construction. Thompson v. N.D.

¹This section was amended, effective January 2, 1995, to reflect the elimination of the county courts by substituting the district judge serving the county for the county judge. See 1991 N.D. Sess. Law ch. 326, ? 44.

²This section was also amended, effective January 2, 1995, to reflect the elimination of the county courts by substituting the district judge for the county judge. 1991 N.D. Sess. Laws ch. 326, ? 47.

Dept. of Agriculture, 482 N.W.2d 861, 863 (N.D. 1992). Statutes are to be construed logically so as not to produce an absurd result and are interpreted consistent with the intent and the purpose of the entire act. In re N.Z., 472 N.W.2d 222, 223 (N.D. 1991). All words in a statute must be given meaning. Kadmas, Lee & Jackson, P.C. v. Bolken, 508 N.W.2d 341, 344 (N.D. 1993). While the rules of grammar are not controlling, grammar and the ordinary meaning and usage of words are important considerations when interpreting a statute. State v. Unterseher, 289 N.W.2d 201, 203 (N.D. 1980).

The first sentence of N.D.C.C. ? 14-03-10 may be broken down grammatically to have three operative clauses as follows:

No person shall solemnize any marriage until the parties to the marriage produce a license regularly issued not more than sixty days prior to the date of the marriage by

a county judge of the county in which either of the contracting parties or the parents of the either of the parties resides or is temporarily domiciled, or

if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or

by a county judge of the county wherein the marriage is to be solemnized

according to the terms of section 14-03-19.

This sentence structure creates three separate provisions regarding where a marriage license may be obtained. First, where either party or one of their parents resides. The second clause applies to unorganized or disorganized counties. And third, in the county where the solemnization of the marriage is to take place. The third clause permits nonresidents to obtain a North Dakota marriage license if they will be married within this state.

A statute is ambiguous if it is susceptible to differing, but rational meanings. Zuger v. North Dakota Insurance Guaranty Association, 494 N.W.2d 135, 137 (N.D. 1992). It could be argued that the requirement in N.D.C.C. ? 14-03-19 that the

applicants have complied with the provisions of chapter 14-03 means, in the context of the county where the marriage is to be solemnized under N.D.C.C. ? 14-03-10, that either one of the contracting parties to the marriage or the parents of either of the parties must reside or be temporarily domiciled in North Dakota. This argument can be supported by the removal of language which provided a specific method by which nonresidents may obtain a marriage license from a North Dakota court from N.D.C.C. ?? 14-03-10 and 14-03-19. See 1991 N.D. Sess. Laws ch. 145.

When a statute is ambiguous, the Legislature's intent may be determined by examining the objects sought to be obtained, the circumstances under which the statute was enacted, the legislative history, former or similar statutory provisions, the consequences of the construction of the statute, the administrative construction of the statute, and the preamble, if any. N.D.C.C. ? 1-02-39. The bill, as introduced in the House, was intended to change the residency requirements and also to remove the requirement for nonresident couples to get an out of state marriage license before they could get a North Dakota license. Hearing on H. 1073 before the House Comm. on Human Services and Veterans Affairs, 52d N.D. Leg. (January 14, 1991) (Statement of Rep. Schimke). The ability to grant a North Dakota marriage license to nonresident couples so they can get married in North Dakota was discussed and supported before the Senate Committee as well. Hearing on H. 1073 Before the Senate Comm. on Human Services and Veterans Affairs, 52d N.D. Leg. (February 11, 1991) (Statements of Rep. Schimke and Senator Lindgren). At the conference committee, Representative Delzer asked Senator Lindgren if two people could come from South Dakota to North Dakota and get married, and Senator Lindgren replied yes. Hearing on H. 1073 before the Conference Committee on Human Services and Veterans Affairs, 52d N.D. Leg. (March 27, 1991).

Therefore, the legislative history supports the interpretation that the amendments made to N.D.C.C. ?? 14-03-10 and 14-03-19 were intended to permit out of state couples who desire to be married in the state of North Dakota to obtain a marriage license from the court having jurisdiction over the place where the marriage was to be solemnized.

- EFFECT -

ATTORNEY GENERAL'S OPINION 94-31
November 1, 1994

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Edward E. Erickson
Assistant Attorney General

vkk